

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re:	RAINALD FORBERT	Confirmation No:	3281
Application No:	09/447,030	Group:	1793
Filed:	November 22, 1999	Examiner:	NGUYEN, NGOC YEN M.
For:	METHOD FOR PRODUCING SUBSTANTIALLY GLOBULAR LYOGELS AND AEROGELS		
Correspondence Address	Mary E. Porter Cabot Corporation 157 Concord Road Billerica MA 01821-7001 US 9786706198		
Attorney Docket No.	AE97/151US		

REQUEST TO WITHDRAW FINALITY OF OFFICE ACTION

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Sir:

This is a request to withdraw the finality of the Office Action mailed March 16, 2010 (Paper No. 20100314).

Section 706.07 of the Manual of Patent Examining Procedure (MPEP) provides:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on

information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

In response to the previous Office Action, mailed June 29, 2009, claims 26, 27 and 28 were amended to specify that the lyosol or hydrosol is introduced into an atmosphere flowing (rather than “which flows”) substantially against the direction of gravity. The amendment was submitted to provide additional clarity as discussed, for instance, at page 5 of the response filed on December 11, 2009.

In the presently pending Office Action (Paper No. 20100314), claims 14-22, 26 and 28 have been rejected, *inter alia*, under 35 U.S.C. § 103(a) as being unpatentable over WO 95/06617, cited on Form PTO-892 (part of Paper 20100314, attached to the Office Action), in view of Fernholz ‘199 (a reference previously applied by the Examiner as teaching that for a spray-drying process for converting a sol to a gel, in order to avoid damage of the gelled and still soft particles, they can be sprayed in an upward inclined direction and collected in a liquid bath or they can be conducted in a countercurrent flow with a current of air or gas).

Since WO 95/06617 does not address an atmosphere flowing substantially against the direction of gravity, a new ground for rejection that involves this reference could not have been necessitated by Applicants amendment of the claims. Nor is the new ground for rejection based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Withdrawal of the finality of the Office Action is respectfully requested.

Should any questions arise, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

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Date: May 13, 2010